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*1992 U.S. Dist. LEXIS 6555, **

PHILADELPHIA GEAR CORPORATION v. TECHNIWELD, INC.

CIVIL ACTION No. 90-5671

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

1992 U.S. Dist. LEXIS 6555

May 1, 1992, Decided

May 1, 1992, Filed; May 4, 1992, Entered

COUNSEL: [*1] For the Plaintiff:

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For the Defendant:

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JUDGES: WALDMAN

OPINIONBY: JAY C. WALDMAN

OPINION: MEMORANDUM

WALDMAN, J.

This is a breach of contract and negligence action to recover for damages allegedly sustained due to defendant's faulty work. Presently before the court is plaintiff's Motion to Compel Discovery. Plaintiff contends that defendant has failed to respond adequately to plaintiff's Request for Admissions and Fourth Set of Interrogatories and Request for Documents. Essentially, plaintiff's Fourth Set of Interrogatories seeks more complete answers to the Request for Admissions. In recognition of this overlap in the requested information, plaintiff asks the court to compel defendant either to amend its answers to the request for admissions or to respond**[*2]** to interrogatories 1 - 10.

Requests for Admissions

Plaintiff submits 118 factual and legal statements for defendant's admission or denial with explanation. Plaintiff contends that these statements are intended either to streamline trial on the issue of damages or to prepare it for any argument against the damages sustained by plaintiff.

Federal Rule of Civil Procedure 36(a), "Requests for Admission," provides in pertinent part:

> A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact including the genuineness of any documents described in the request . . . If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. . . . An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry**[*3]** and that the information known or readily obtainable to the party is insufficient to enable the party to admit or deny.

The purpose of **Rule 36** is "to facilitate proof with respect to issues that cannot be eliminated from the case, and to narrow the issues by eliminating those that can be." United States v. Nicolet, Ind., 1989 W.L. 51734 (E.D. Pa. 1989) (citing Notes of Advisory Committee on Rules, 1970 Amendment, 48 F.R.D. 485, 531-32 (1969). See also United Coal Companies v. Powell Construction Co., 839 F.2d 958, 967 (3d Cir. 1988).

Plaintiff moves for supplemental answers to approximately half of its requests for admissions. Specifically, these statements are 4-6, 10-12, 16-18, 22-24, 28-30, 34-36, 40-42, 47-49, 53-55, 59-61, 65-67, 71-73, 78-80, 84-86, 91-93, and 98- 100. In general, these statements relate to whether a type of damage was proximately caused by defendant's negligence or was reasonably foreseeable. In its response to each of the foregoing statements, defendant submits the following answer or a slight variation thereof:

> Denied. Subject to the denial more specifically set forth above, the statements contained in**[*4]** this request constitute conclusions of law which are denied as to their interpretation, relevancy, propriety and otherwise under the Federal Rules of Civil Procedure. By way of further clarification, answering defendant denies that the loss, damage, expense or cost was reasonably foreseeable and within the contemplation of the parties when the contract was formed.

Plaintiff contends that its statements are not subject to objection in that **Rule 36**(a) permits requests for admissions which require application of law to fact. See Ghazerian v. United States, 1991 W.L. 746 (E.D. Pa. 1991); Diederich v. Department of the Army, 132 F.R.D. 614, 617 (S.D.N.Y. 1990); Wright & Miller, § 2255 at 322 (Supp. 1992). This principle, however, is inapplicable to the present case in that defendant has not refused to answer the requests for admission. Rather, defendant has denied each matter in this category of admissions.

Contrary to plaintiff's assertion that defendant must explain the basis for its denial, **Rule 36** (a) specifically provides that a party's denial of the request for admission is sufficient. Once defendant specifically denies the request for admission, **[*5]** it need not "set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter."

Accordingly, defendant's responses to the foregoing requests for admissions are sufficient and plaintiff's motion to compel further answers will be denied.

A second category of requests for admissions relates to specific damages allegedly sustained by plaintiff. These requests include numbers 1-3, 7-9, 13-15, 19-21, 25-27, 31-33, 37-39, 43-46, 50-52, 56-58, 62-64, 68-70, 74-77, 81-83, 87-90, 94-97, 101-104, 106-112 and

115. To these statements defendant responds as follows:

> Denied. Answering Defendant can neither admit nor deny the request contained in this paragraph on the basis of the information known or readily obtainable by it following a reasonable investigation.

Defendant contradicts itself by denying the statement and then explaining why it is unable to deny the statement. Nevertheless, it appears that defendant has refused to answer on the basis that after reasonable investigation, it lacks sufficient information to admit or deny.

If the court concludes that a party has not complied with **Rule 36**, the court may order the matter admitted or may **[*6]** compel the party to amend its answer to the admission. See United States v. Lorenzo, 1990 W.L. 83388 (E.D. Pa. 1990) ("Answers that appear to be non-specific, evasive, ambiguous and appear to go to the accuracy of the requested admissions rather than the 'essential truth' contained therein are impermissible and must be amended"). At this point in the litigation, the conclusion of discovery, defendant reasonably should possess the information necessary unambiguously to admit or deny these statements. If not, defendant must elaborate on the specific unknown facts which prevent it from admitting or denying the statement at this time. The mere recitation of **Rule 36** language regarding a party's inability to answer is not adequate. See Cada v. Costa Line, Inc. 95 F.R.D. 346, 347 (N.D. Ill. 1982); Wright & Miller § 2261 at 730 (responding party must "set forth in detail the reasons" why he cannot admit or deny the matter).

In response to request for admission 116, defendant responds: "denied as stated." Such a response is clearly deficient under **Rule 36**.

> A denial shall fairly meet the substance of the requested admission, and when good faith requires that**[*7]** a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder.

See also Wright & Miller, § 2260 at 727-28. Accordingly, the court will compel defendant to comply with **Rule 36** by specifying which part of the requested admission it denies.

Interrogatories

In light of the court's conclusions that defendant must amend its answers to the second category of requests for admissions discussed above and that defendant's answers are sufficient as to the other category of statements, the court will not compel defendant to respond to interrogatories 1-10. These interrogatories are a repetitive and overly burdensome attempt to force defendant to answer its requests for admissions. Defendant's amended answers to the requests for admissions will satisfy plaintiff's inquiries to the extent **Rule 36** permits.

Defendant's answers to plaintiff's interrogatories 11 and 12 are sufficient without further response.

Finally, plaintiff seeks further responses to its interrogatories regarding expert witnesses. Although defendant has responded to this request, its answers **[*8]** are inadequate. In its response to plaintiff's motion to compel, defendant represents that it will provide supplementary answers on information regarding expert witnesses. Accordingly, the court will compel defendant to respond fully to plaintiff's interrogatories 13 and 14 if it has not done so already.

An appropriate order will be entered.

ORDER

AND NOW, this 1st day of May, 1992, upon consideration of plaintiff's Motion to Compel Discovery and defendant's response thereto, consistent with the accompanying memorandum, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** in part and **DENIED** in part in that Defendant is directed to amend its answers to Requests for Admissions 1-3, 7-9, 13-15, 19-21, 25-27, 31-33, 37-39, 43-46, 50-52, 56-58, 62-4, 68-70, 74-77, 81-83, 87-90, 94-97, 101-104, 106-112, 115 and 116 and to respond fully to Interrogatories 13 and 14 in plaintiff's Fourth Set of Interrogatories. Plaintiff's Motion to Compel is otherwise **DENIED.**

BY THE COURT:

JAY C. WALDMAN, J.

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